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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,894	12/14/2001	Paul Joseph Datta	15,075	9031
23556	7590	11/19/2003		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
			EXAMINER REICHLE, KARIN M	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 11/19/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,894

Applicant(s)

DATTA ET AL.

Examiner

Karin M. Reichle

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 3-8, 11-14 and 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9-10 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 14 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the species of pattern of Figure 4D, the species of the property of the first fastening material being a polypropylene copolymer and the species of the property of the second fastener material being a composition of a polymer selected from elastic thermoplastic polymers and metallocene catalyzed polymers in Paper No. 6 is acknowledged.

2. Claims 3-8, as well as claims 11-14 and 18-21, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

While claims 11-14 and 18-21 were indicated as generic to all the species in Paper No. 5, for the reasons set forth in paragraph 6, section 6) *infra*, these claims are not deemed generic and do not read on the species as shown in the Figures.

Specification

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because in Figures 1-2, the lines from 54 and the front 58 should be dashed to denote underlying structure. In Figure 2, the lines from 65 and 67 should also be dashed. In Figure 3, where is the cutaway as described at, e.g., page 10, lines 13-16. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

5. The abstract of the disclosure is objected to because terminology which can be inferred, i.e. "The invention relates to" and "of the invention", and language setting forth purported merits of the invention, i.e. "several improvement features" should be avoided. Correction is required. See MPEP § 608.01(b).

6. The disclosure is objected to because of the following informalities: 1) On page 1, line 2, "claims priority to" should be --claims the benefit of--. 2) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate. See MPEP 608.01(d) and 1302.01. 3) On page 10, lines 17-21, Figures 4A-4I should be described. 4) The description of Figure 8 bridging pages 10-11 is incomplete, i.e. the Figure is partially cutaway. 5) In Figure 8, what is 79? 6) In claims 11-14 and 18-21 Applicants claims the engagement surface or component extending laterally beyond the side edges of the

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article. As best understood with reference to the Figures and the paragraph bridging pages 21-22, the engagement component is 66, the side edges are 30 and the component 66 extends at 90. However, the side edges have been described as being those of the diaper or article, as best understood element 20, but the diaper or article also includes component 66 as claimed and described and thus the side edges of the diaper or article include element 66, i.e. are defined in part by the component 66, i.e. 90. How can the component 66 extend beyond itself? It appears that the side edges which the component extends beyond are those of the chassis or combination of elements 28, 42 and 44 not those of the entire diaper or article 20. A clear and consistent description of the invention should be set forth.

Appropriate correction is required.

Claim Objections

7. Claims 1-2, 9-10, and 15-17 are objected to because of the following informalities: In claim 1, line 1 and last line, "like" should be --shaped--. In claim 2, lines 1 and 2, after "one", insert --said--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. Claims 1-2, 9-10 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, are the fastener area and the zones of first and second zones of fastening material one and the same, i.e. how many fastener areas at a minimum are there? Two?

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Three? Also the description of the fastener with respect to the remainder of the claimed features is insufficient to support the language of the “wherein” clause, i.e. is incomplete, i.e. how is the fastener provide stability between the waist regions and maintain the pant-like prefastened configuration, e.g. where is it located on the article? What does it connect to?

Claim Language Interpretation

9. “Disposable” is defined as set forth on page 11, lines 19-21. Although not explicitly defined in the specification, “prefastened”, in light of the disclosure at page 2, lines 3-30, and page 8, lines 29-31, is considered as configured when fasteners are attached, i.e. a pant-like configuration, to be pulled up or down over the hips of a wearer, i.e. prior to application to the wearer, but does not require forming of such configuration during the manufacturing process. The terms “multiple property”, “non-abrasive” and “oversized” have not been specifically defined and therefore will be accorded their common, i.e. dictionary, definition. Thus, “multiple property” is defined as having more than one property, i.e. any property. “Non-abrasive” is defined as not “causing abrasion, harsh; rough”, not “to rub off or wear away by friction”. “Oversized” is considered a relative term absent claiming of specific dimensions thereof. With regard to the term “mechanical fastening material” see page 9, lines 2-3, and page 22, lines 7-10.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-2 and 9-~~21~~^{10, 15-17} are rejected under 35 U.S.C. 102(b) as being anticipated by

Kline et al '908 (and thereby Battrell '527).

Claim 1, first full paragraph: see Claim Language Interpretation section supra, Figures 1-3, elements 20, 28, 40, 42, 44, 46, 48, 50 and 52, col. 2, first full paragraph, col. 3, lines 12-14, the Summary of the Invention section, col. 17, lines 7-13 and col. 25, line 39-col. 26, line 6.

Claim 1, second full paragraph: It is noted that size of the fastener area of the fastener relative to the overall size of the fastener has not been claimed, i.e. at a minimum it can be only a portion thereof. It is further noted that the engagement ability of the first and second materials has not been claimed, i.e. could be the same, nor is it claimed that the engagement zone is also non-abrasive, i.e. both zones could be nonabrasive, equally so or not. The claim does not require that the zone be non-abrasive due to the second material. The claim also does not require that the materials be non-unitary, that each zone only includes the one material, that the zone be entirely covered by the material or that the first and second materials have to be different materials. The zones as claimed could be two zones of the same material.

The Kline patent teaches a fastener, 62 or 64, with 202, which has a longitudinal direction, a lateral direction and multiple properties, see, e.g., col. 16, lines 34-62, i.e. different strengths and permeabilities, or col. 17, lines 32-37, and thereby Battrell '527 at col. 2, line 13-17, i.e. has both the property of sheer stress resistance and peel force. The Kline patent teaches a fastener area, see, e.g., col. 18, lines 8-9 and col. 22, lines 17-19, i.e. any portion of the fastener. The Kline patent teaches at least one engagement zone of a first mechanical fastening material and at least one engagement zone of a second mechanical fastening material, see, e.g., col. 23,

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lines 10-13 and col. 17, line 14-col. 18, line 6, i.e. multiple zones of mechanical fastening material, and/or Figure 7, col. 16, lines 30-62, col. 17, line 14-col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17-19, i.e. zones 253 and 254 which can include mechanical fastening material, and/or col. 17, lines 14-18 and 32-37, and thereby Battrell '527 at Figures 1-2, col. 7, line 60-col. 8, line 2, col. 10, lines 61-64, col. 11, lines 53-55, col. 12, lines 13-24, i.e. mechanical fastening material having different zones due to nonuniform pattern, size, spacing and/or adhesive coverage. The Kline device teaches at col. 22, lines 9-12 that the fasteners, i.e. all the zones, do not irritate the wearer's skin. Since "irritate" is defined as "to chafe or inflame" and "chafe" is defined as "to wear away or irritate by rubbing", the fasteners are "nonabrasive", see Claim Language Interpretation section supra. As similarly set forth in that section, the terminology "oversized" is considered relative absent claiming of specific dimensions thereof. Therefore the Kline fastener is considered "oversized". See also col. 22, lines 17-19 and col. 22, lines 25-51, i.e. the fastener provides stability between waist regions and maintains a pant-like configuration. Alternatively, the "wherein" clause of claim 1 recites properties, function and capabilities of the claimed structure. The Kline device also includes such structure. Therefore, there is sufficient factual evidence to conclude that the properties, functions and capabilities of such claimed structure would also be inherent in the same structure of Kline. See MPEP 2112.01.

Claim 2: It is noted that the longitudinal directions of the fastener and the article are not required to be parallel. Note, again, Figure 7, col. 16, lines 30-62, col. 17, line 14- col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17-19, i.e. the zone 253 or a portion thereof and an equal and adjacent portion of zone 254 can include the engaging component 202 and such zone 253 or

portion thereof and equal portion of zone 254 define the fastener area. Attention is again invited to the discussion of the scope of the language of the second full paragraph of claim 1 supra.

Claim 9: See col. 17, lines 62-63, and lines 32-37 of Kline, and thereby col. 8, lines 40-41 of Battrell '527.

Claim 10: See col. 17, lines 32-37 of Kline, and thereby col. 8, lines 30-56 of Battrell '527.

Claim 15: See Figure 3 of Kline.

Claim 16: See, e.g., col. 21, lines 5-16 and Figure 2 and col. 12, lines 26-29 of Kline, i.e. the landing member would be identical to the fastener of claim 1, discussed supra, and thus would engage the engaging component of the rear waist region.

Claim 17: See, e.g., Figures 2, 3 and 7.

Conclusion


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art is either the published patent or application referred to by Applicants in the IDS or are directed to prefastened articles, skin-friendly fasteners and/or fasteners with various zones.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
November 12, 2003